United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT OF THE SHINNECOCK INDIAN NATION	)	Order Dismissing Requests for Reconsideration
	)	Docket Nos. IBIA 10-112
	)	10-116
	)	October 1, 2010

The Connecticut Coalition for Gaming Jobs (Coalition) and the Montauk Tribe of Long Island, New York (Montauk), filed timely requests for reconsideration of the decision of the Acting Principal Deputy Assistant Secretary - Indian Affairs (Assistant Secretary) to acknowledge the Shinnecock Indian Nation (Nation), on Long Island, New York, as an Indian tribe within the meaning of Federal law.[1] Both requests were filed with the Board of Indian Appeals (Board) pursuant to 25 C.F.R. § 83.11 of the Federal acknowledgment regulations, and in accordance with expedited procedures provided by the court-approved Stipulation and Order for Settlement (Stipulation) entered in *Shinnecock v. Salazar*, No. CV-06-5013 (E.D.N.Y. May 26, 2009). *See* 75 Fed. Reg. at 34,765.[2]

The Coalition identifies itself as "a coalition of businesses and individuals" whose members will be harmed by the Final Determination because, according to the Coalition, the Nation will build a casino in the State of New York that will adversely affect gaming-related jobs and businesses in Connecticut. Notice of and Request for Reconsideration of the Coalition (Coalition Notice) at (unnumbered) 2, 4. The Coalition also identifies itself "as a limited liability company paying taxes in Connecticut." Coalition Supplemental Brief

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[1] The decision, "Final Determination for Federal Acknowledgment of the Shinnecock Indian Nation" (Final Determination), dated June 13, 2010, concluded that the Nation satisfies the seven mandatory criteria under 25 C.F.R. § 83.7 for acknowledgment. *See* 75 Fed. Reg. 34,760 (June 18, 2010).

[2] The Stipulation does not include a requirement that the Board expedite its consideration of the reconsideration requests. Because we dismiss both requests for lack of standing, we need not further consider the Nation's request for expedited consideration.

on Standing at (unnumbered) 4. The Coalition alleges that state taxes in Connecticut will likely rise as Connecticut's gaming revenues diminish if the Nation constructs a casino in New York.

We dismiss the Coalition's request for reconsideration because the acknowledgment regulations allow only an "interested party" — a party that can establish a legal, factual, or property interest in an acknowledgment determination, *see* 25 C.F.R. § 83.1 — to file a request for reconsideration. The Coalition has not identified a single business or individual that is a member of the Coalition, and thus has provided us with no basis to find that one or more of its members is an interested party. And to the extent that the Coalition claims interested-party status as an organization because it pays taxes in Connecticut, the Coalition's interest is too generalized to constitute a significant protectable interest, and the nexus to the acknowledgment determination too attenuated, to bring the Coalition within the definition of "interested party."

Montauk is a group that submitted a letter of intent in 1998 to petition for Federal acknowledgment as an Indian tribe,[3] and is identified by the Department's Office of Federal Acknowledgment (OFA) as Petitioner #188.[4] *See* Brief of Assistant Secretary on Interested Party Status (Assistant Secretary's Brief) at 8. OFA does not consider Montauk's petition to be complete. *See id.*, Ex. 4 ¶ 8 (Declaration of Alycon T. Pierce). In seeking reconsideration of the Final Determination, Montauk contends that it and the Nation were part of a historical Montauk Confederacy, that both Montauk and the Nation have common ancestors, and that — although Montauk supports Federal acknowledgment of the Nation — the Final Determination must be reconsidered because the two petitions cannot be evaluated independently and must be considered and decided concurrently. OFA treated Montauk as an interested party in the proceedings conducted by the Assistant Secretary.

We dismiss Montauk's request for reconsideration because we conclude that Montauk has not demonstrated, in relation to the Final Determination that has now issued, that it is an "interested party," as defined in 25 C.F.R. § 83.1. Regardless of whether Montauk had a sufficient interest in the proceedings *leading up to* a final determination, e.g., while

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[3] A letter of intent to petition for Federal acknowledgment is only the first step in the process, followed by the submission of documentation by the petitioner to demonstrate that it satisfies each of the seven mandatory criteria in 25 C.F.R. § 83.7. *See* 25 C.F.R. §§ 83.4 - 83.6.

[4] Petitioner #188 apparently variously refers to itself as the Montauk Tribe or the Montaukett Tribe.

evidence was still being evaluated and potential conflicting claims between petitioners might require resolution, Montauk has failed to show how it has a cognizable stake — a legal, factual, or property interest — in the Final Determination itself. Montauk does not articulate, nor does it provide evidence to demonstrate, how Montauk is or might be adversely affected by the Final Determination to acknowledge the Nation as a tribe. At best, Montauk suggests that a shared history and common ancestry between Montauk and the Nation necessarily creates a conflict and makes a decision on the Nation's petition dependent upon consideration of and a decision on Montauk's petition. Montauk's premise is incorrect, and we conclude Montauk lacks standing to request reconsideration.

Regulatory Framework

In order to be entitled to request reconsideration from a final determination to Federally acknowledge a group as an Indian tribe, the requester must be an "interested party." 25 C.F.R. § 83.11(a)(1). The term is defined in the acknowledgment regulations as follows:

> *Interested party* means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

Id. § 83.1.

The meaning of the phrase "legal, factual or property interest" is not explained in the rulemaking, other than to indicate that the interest must be "significant." *See* 59 Fed. Reg. 9280, 9283 (Feb. 25, 1994);[5] *see also In re Federal Acknowledgment of the Nipmuc*

[5] The final rule created a distinction between "interested parties" and "informed parties," and the preamble to the final rule explains the intent to limit interested parties (who are entitled to seek reconsideration of a final determination) to third parties with a "significant property or legal interest." *Id*. Although the explanation does not refer to a "factual" interest, the intent in creating the distinction between interested and informed parties suggests that a factual interest must also be significant to be a basis for status as an interested party.

Nation, 41 IBIA 96, 99 (2005) (interest must be "a significant protectable interest" in order to be encompassed within the definition of "interested party"). In addition, the Board has construed the definition of "interested party" to include an element of causation: In order to have an interest "in" an acknowledgment determination, a party must show that it has some actual stake in the outcome of the acknowledgment proceeding by showing that it would or might be affected by the determination. *See id.* at 98; *see also In re Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan*, 33 IBIA 291, 298 (1999) (party must show that it "would (or might) be affected by the change in status of an Indian group resulting from an acknowledgment determination"). The phrase "might be affected" in the definition is used with specific reference to recognized tribes and unrecognized Indian groups but the Board has interpreted the definition of "interested party" to incorporate a causation requirement for all interested parties. *See In re Federal Acknowledgment of the Ramapough Mountain Indians, Inc.*, Docket No. 96-61-A, Order at (unnumbered) 2-3 (July 25, 1996) (denying interested party status to individual who had empathy for petitioner's case but no personal stake in the outcome).[6]

Discussion

I. The Coalition Does Not Have Standing as an "Interested Party" Either Through its Members or in its Own Right.

We conclude that the Coalition lacks standing to request reconsideration because its claim of interested-party status through its members is unaccompanied by the identification of any member, and thus the Coalition fails to provide any evidentiary basis upon which we could conclude that one or more of its members would or might be affected by the Final

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[6] OFA apparently construes the might-be-affected language in the second sentence of the definition of "interested party" as applying only to recognized tribes and unrecognized groups. *See* Assistant Secretary's Brief at 6. For individuals or entities asserting a "legal, factual or property interest," the Assistant Secretary places the emphasis on the language requiring that such an interest be "in the acknowledgment determination." *Id*. At least as applied to the present requests, we are not convinced there is a meaningful distinction. To have a legal, factual, or property interest "in" an acknowledgment determination necessarily implies, we think, being affected in some way by the determination — i.e., implies a causation requirement. On the other hand, it may well be that the might-be-affected language, as limited to recognized tribes and unrecognized groups, creates a relaxed standard of causation that does not apply to other third parties. Montauk's request does not require us to address or decide that issue because even under a more relaxed standard, Montauk has not demonstrated that it has standing.

Determination.[7] And the Coalition's apparent assertion of standing as an entity also fails because the only interest the Coalition asserts in that capacity is that of a Connecticut taxpayer, and that is too generalized an interest to be cognizable as a significant and protectable "legal, factual or property interest," within the meaning and intent of the regulations. *See* 25 C.F.R. § 83.1; 59 Fed. Reg. at 9283; *Nipmuc Nation*, 41 IBIA at 99.

The Coalition identifies itself as "a coalition of businesses and individuals" whose members will be harmed by the Final Determination because the Nation will build a casino in New York that will, according to the Coalition, adversely affect gaming-related jobs and businesses in Connecticut and erode Connecticut's tax base, which will lead to higher taxes for Connecticut taxpayers. Coalition Notice at (unnumbered) 2, 4. In other types of appeals, the Board has allowed an association to bring an appeal on behalf of its members, and we see no intent in the regulations to disallow that practice for acknowledgment cases. But if an association's standing is dependent upon its membership, the association must show, *inter alia*, that one or more of its members has standing in his or her own right. *See, e.g., Voices for Rural Living v. Acting Pacific Regional Director*, 49 IBIA 222, 232-33 (2009). In the present case, the Coalition has not identified a single business or individual that is a member of the Coalition. Without identifying at least one member for purposes of asserting injury to gaming-related jobs and businesses resulting from the Final Determination, the Coalition cannot meet its burden to show that it, through its members, qualifies as an "interested party" with standing to seek reconsideration of the Final Determination.

The Coalition also identifies itself "as a limited liability company paying taxes in Connecticut." Coalition Supplemental Brief on Standing at (unnumbered) 4.[8] The Coalition contends that if the Nation becomes Federally recognized, it will build a casino in New York, gaming revenues in Connecticut will diminish, and Connecticut will be required either to raise taxes or reduce services. Thus, it appears that the Coalition may be asserting standing as a corporate entity, independent of its members. As the Coalition acknowledges, the "interest" that the Coalition asserts in this regard is not distinguishable from any other

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[7] The Board specifically advised the requesters that they had the burden of proof to establish interested-party status, and to provide "sufficient evidence, in the form of affidavits or other evidence, to support such a finding." Notice of Receipt of Timely Requests for Reconsideration, Order Consolidating Proceedings, Order Concerning Briefing on Standing and the Merits, and Notice of Ex Parte Communications, at 2 (July 22, 2010).

[8] The Coalition did not submit any affidavit or other evidence to support this assertion, but the Board presumes, for purposes of this decision, that the assertion is correct.

taxpayer in the State of Connecticut. *Id*. at 3-4 ("every single Connecticut taxpayer will feel the financial burden of this decision"). Considering the intent of the regulations to limit interested-party status to those with a "significant" interest, we conclude that an interest as a taxpayer is too generalized to constitute a protectable interest that falls within the definition.[9] Moreover, the causal link between acknowledgment of the Nation and the alleged injury — a possible future increase in the Coalition's state tax liability or a possible reduction in unspecified services by Connecticut — is too attenuated for the Coalition to satisfy the causation element of standing, i.e., to show that it has a stake in the determination to Federally acknowledge the Nation as an Indian tribe.

In summary, the Coalition has failed to show that it is an "interested party," within the meaning of 25 C.F.R. § 83.1, and thus the Coalition lacks standing to request reconsideration under 25 C.F.R. § 83.11(a)(1).

II. Montauk Does Not Have Standing as an Interested Party to Request Reconsideration Because it Has Not Shown that the Final Determination to Acknowledge the Nation Might Adversely Affect Montauk.

A. Introduction

OFA granted Montauk the status of an "interested party" in the proceedings before the Assistant Secretary, and Montauk asserts, without additional argument, that it therefore has standing as an interested party to seek reconsideration of the Final Determination. The Board previously has held that it has the authority to make an independent determination of interested-party status for purposes of reconsideration proceedings before the Board. *See In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 32 IBIA 216, 219 (1998).[10]

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[9] To the extent that the Coalition attempts to separately invoke the interests of the State of Connecticut, which the Coalition contends will suffer a loss of tax revenue if the Final Determination is upheld, we do not construe the definition of "interested party" in the acknowledgment regulations to permit a requester to assert the interests of another entity, and thus the Coalition lacks standing to assert the interests of the State of Connecticut. *Cf. Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005) (a party must assert its own rights or interests).

[10] In *Golden Hill Paugussett*, the Board found that a third party did not need to have been granted interested party status in the proceedings before the Assistant Secretary in order to qualify as an interested party in the proceedings before the Board. *See also Match-e-be-nash-*

(continued...)

We conclude that Montauk's status as an interested party in the proceedings before the Assistant Secretary is not dispositive of Montauk's standing to seek reconsideration of the Final Determination by the Board. A finding that Montauk could demonstrate that it "might be affected" by the proceedings leading up to and culminating in a final determination involves a substantively different inquiry than the inquiry involved in finding that Montauk would or might be affected by the now-issued Final Determination. It is the latter inquiry that is relevant to standing to request reconsideration from the Board, and we conclude that Montauk has not made the necessary showing.

B. Interested-Party Status in the OFA Proceedings is Not Dispositive for Determining Interested-Party Status before the Board

The proceedings conducted by the Assistant Secretary, which culminate in a final determination under 25 C.F.R. Part 83, serve a separate function than and are substantively different from proceedings in which a party seeks reconsideration of a final determination made by the Assistant Secretary. Thus, a showing of interested-party status *prior* to a final determination is not dispositive of whether one has standing to seek reconsideration *after* a final determination is issued. Although the same definition of "interested party" applies in both proceedings, the focus for standing changes when a final determination is issued: In the proceedings leading up to a final determination, OFA is accepting and evaluating evidence, and other petitioners may present conflicting claims or conflicting interpretations of the same evidence. During those proceedings, it may well be that a recognized tribe or another petitioning group that shares some common history with the petitioner will presumptively have a sufficient, cognizable interest that might be affected by the proceedings, depending on the outcome.

Once a final determination is issued, however, the Assistant Secretary's interpretations of evidence and relevant findings are fixed, and the final determination becomes the reference point for determining whether a third party has a legal, factual, or property interest in that decision. It then becomes the obligation of an entity seeking reconsideration to demonstrate, with reasonable specificity, how it is or might actually be affected by the Final Determination.

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[10](...continued)
she-wish, 33 IBIA at 296-97 (same). The present case presents the opposite issue: When a third party (in this case Montauk) *has* been granted interested party status in the proceedings before OFA, does it necessarily qualify as an interested party for purposes of a request to reconsider the final determination?

C. Montauk Has Not Demonstrated that it has Standing to Request Reconsideration

As noted earlier, Montauk asserts, without specific argument, that it has standing as an interested party, apparently relying on the fact that it was granted that status in the proceedings before the Assistant Secretary. We have concluded that Montauk's status in those proceedings is not dispositive. Notwithstanding Montauk's failure to present arguments specifically addressing the standing issue,[11] we consider whether Montauk's status as an interested party may reasonably be inferred from its arguments on the merits and other assertions. We conclude that Montauk has not established that it has a legal, factual, or property interest in the Final Determination because Montauk has not shown, nor can we determine, how it is or might be adversely affected by the Final Determination, i.e., how it has an actual and legally cognizable stake in the decision to acknowledge the Nation.[12]

Montauk apparently claims that it is the present-day continuation of or successor-in-interest to the historical Montauk Tribe located on Long Island.[13] Montauk characterizes the Shinnecock and Montauk as "separate tribes," "cousins to each other," within a single

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[11] Montauk attempted to file a reply to the Nation's answer to Montauk's opening brief but the Board struck the reply brief because it is not allowed by the regulations. *See* Order Striking Montauk's Reply Brief (Sept. 9, 2010) (quoting Board's July 22, 2010, scheduling order directing that "[a]s provided in 25 C.F.R. § 83.11(e)(6), *reply briefs are not permitted in this proceeding* because the petitioner that is the subject of these acknowledgment proceedings, i.e., the Nation, is not the party that filed a request for reconsideration." (emphasis added)). Even if the Board were to consider Montauk's reply brief, it would not alter our conclusion that Montauk lacks standing.

[12] The acknowledgment regulations use the word "affected" without expressly stating that the claimed effect must be adverse, but we construe that requirement as implicit because in requesting reconsideration, a party necessarily seeks as relief to have the acknowledgment determination set aside, and such a request for relief necessarily implies that an alleged adverse effect will thereby be remedied.

[13] We assume, solely for purposes of evaluating Montauk's standing, that Montauk's claim in this regard is correct. According to the Assistant Secretary, a group identifying itself as the Montauk Indian *Nation*, a.k.a., Montaukett Indian *Nation* (emphases added), filed a letter of intent to petition for acknowledgment in 1995 and is designated petitioner #162. *See* Assistant Secretary's Brief at 8 n.11.

Montauk Confederacy. Montauk Opening Brief, Appendix B at (unnumbered) 2 and Appendix C at (unnumbered) 1.[14] Montauk contends that the Indians of Long Island were "all of the same group," and share common ancestry, and that the Montauk leader Wyandanch (d. 1659) was the chief of the Confederacy. Montauk Opening Brief at (unnumbered) 3. According to Montauk, both Montauk and the Nation consider four surnames — Bunn, Walker, Cuffee, and Kellis — to be "the basis of their ancestral lineage." *Id*. at 3-4. This "fact," argues Montauk, means that the Nation "could not independently meet the requirement of being descend[ed] from a historical Indian tribe" and the Nation "cannot independently claim the ancestors relied upon to demonstrate the basis of their membership." *Id*. at 4-5. According to Montauk, "[a]ll of the historical individuals used by the Shinnecock Nation of Indians are all descend[ed] from Chief Wyandanc[h], Grand Sachem of the Montauk Tribe of Long Island, New York. The implication is that the historical names used by the Shinnecock are the same names used by the Montauk." *Id*. at 5.

The problem is that Montauk never articulates with any clarity how the "fact" of common ancestral lineage, dating back to the 17th century, creates any conflict, such that the Nation's petition could not properly be considered independently. More importantly, Montauk does not explain how independent consideration of the Nation's petition, and the resulting favorable decision for the Nation, adversely affects a legal, factual, or property interest of Montauk, which is the focus of our standing inquiry. Montauk must, at this point, do more than offer speculation about hypothetical conflicts or undefined effects. A generalized assertion of having a "superior claim" to a 17th century ancestor provides us with no basis to find an adverse effect on Montauk caused by the Final Determination because Montauk fails to connect that abstract "claim" to a present-day effect.

A shared history between the Nation and Montauk, and common ancestry among the members of each group, even if shown to exist, is not sufficient, by itself, to demonstrate

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[14] Elsewhere, Montauk states that the Indian population on Long Island "was not distinct tribes but a confederacy of groups," Montauk Opening Brief at (unnumbered) 5, but Montauk clearly asserts that both the Shinnecock and Montauk were distinct tribes or tribal groups. Montauk Opening Brief, Appendix B at 2, 6; *see also* id. at 7 (Montaukett Tribe . . . existed as a "tribe"); *id.* at 3 (Montauk had a separate land base, the Montaukett Reservation). In fact, Montauk submitted comments supporting Federal acknowledgment of the Nation as an Indian tribe. *See* Montauk Opening Brief, Appendix C at 5 ("The Montaukett Tribe is happy for our cousin Shinnecock Tribe with their Proposed Finding on Federal Recognition.").

that the Final Determination may adversely affect Montauk. As both the Nation and the Assistant Secretary argue, there is no impediment to two tribes tracing the ancestry of members back to common ancestors, or even to two tribes descending from a single historical tribe. *See* Nation's Answer Brief at 24-25; Assistant Secretary's Brief at 9; *see also In re Federal Acknowledgment of the Snoqualmie Tribal Organization*, 34 IBIA 22, 28 (1999) (quoting technical report stating that "historical tribes may have separated into more than one political unit).[15] Indeed, the evidence in the record illustrates how tribal affiliation of an ancestor may not be determinative of a descendant's tribal affiliation. *Compare* Summary Under the Criteria and Evidence at 49 ("residency rules blocked any Montauk woman married to a non-Montauk Indian from living in that group's community") *with id.* at 49-50 ("the record for the Shinnecock evaluation did not contain similar exclusionary language, and the historical group may have accepted mixed couples or their descendants during the same period"). We cannot simply infer, as Montauk apparently would have us do, that the presence of descendants of Wyandanch in both Montauk and the Nation's memberships, if shown to exist, would mean that the Final Determination adversely affects Montauk.[16]

Potentially relevant to Montauk's arguments, the regulations define "member of an Indian group" to mean "an individual who is recognized by an Indian group as meeting its membership criteria *and* who consents to being listed as a member of that group." 25 C.F.R. § 83.1 (emphasis added). Thus, even if Montauk's argument can be construed as

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[15] In briefing the issue of Montauk's standing, the Assistant Secretary states that Montauk's membership list does not overlap with that of the Nation. *See* Assistant Secretary's Brief at 10 & Ex. 4, ¶¶ 14-15 (Montauk's membership list "does not include any individual who was or is considered a member of the [Nation] since 1998," and "does not include any individual who appears in the [Nation's] genealogical database at all.").

The Assistant Secretary notes that Montauk's use of "base roll" is mistaken in the acknowledgment context. *See* Assistant Secretary's Brief at 8 n.10. The "base roll" of a petitioner that is acknowledged to exist as an Indian tribe is its *current* membership list. *See* 25 C.F.R. § 83.12(b).

[16] Even assuming the validity of the genealogical information provided by Montauk, successive generations after Wyandanch are not only the descendants of Wyandanch, but also of numerous other ancestors, who might have other tribal affiliations, including Shinnecock. The evidence produced by Montauk confirms that the two groups apparently intermarried with some frequency. Montauk Opening Brief, Appendix B at (unnumbered) 7.

alleging overlapping membership *criteria* with those of the Nation,[17] it would not follow that Montauk has demonstrated that the decision to acknowledge the Nation adversely affects or might affect Montauk's own petition for acknowledgment because membership comprises both a group's criteria and a member's consent to membership. To simply allege that the "majority" of the Montauk's "lineage and ancestry supersedes the Shinnecock as per Chief Wyandanch," Montauk Opening Brief at (unnumbered) 3, and therefore the Nation cannot independently be Federally acknowledged, *id*. at 4, is unmoored from any legally relevant standard linked to legally relevant facts, and does not establish that Montauk has a factual, legal, or property interest in the Final Determination.[18]

Montauk's failure to identify any actual or even potential adverse effect on it caused by the Final Determination makes this case distinguishable from those cases in which the Board has found that tribes or unrecognized groups had interested-party status and standing to request reconsideration of a final determination. For example, in *Snoqualmie*, 34 IBIA at 25-26, the Tulalip Tribes claimed to be the sole adjudicated successor to the historical Snoqualmie tribe. Thus, acknowledgment of the petitioner Snoqualmie Tribal Organization could give rise to competing successorship claims, whether successful or not, to historical property rights (e.g., treaty rights). *Cf. U.S. v. Washington*, 593 F.3d 790 (9th Cir. 2010) (Federal recognition of Samish Tribe did not constitute extraordinary circumstance for reopening judgment concerning treaty rights).[19]

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[17] *But see supra* note 15.

[18] For these same reasons, and based on our review of the record, even if we were to find that Montauk had made the necessary showing to establish standing, we would find that it has not met its burden to demonstrate either of the two apparent grounds relied upon for invoking the Board's jurisdiction over the merits of its request, i.e., that there is a "reasonable alternative interpretation[], not previously considered, . . . that would substantially affect the determination that [the Nation] meets . . . one or more of the criteria in [25 C.F.R. § 83.7(a) through (g)]," or "[t]hat there is new evidence that could affect the determination." *See* 25 C.F.R. § 83.11(d)(1) & (4). Montauk's interpretation is not reasonable because it is based on a mistaken premise that the tribal affiliation of an ancestor necessarily determines or limits the tribal affiliation of a descendant, and the "evidence" it proffers is not substantively new.

[19] Montauk states that it has a separate historical reservation from that of the Nation and does not assert any competing claim to a property interest.

To the extent that the Board's decision in *Snoqualmie* suggests that evidence of a historical relationship with the petitioner, by itself, is sufficient to demonstrate that a

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Similarly, for unrecognized groups, the Board has held that a group qualified as an interested party when it asserted a claim in conflict with that of the petitioner. For example, in *In re Federal Acknowledgment of the Historical Eastern Pequot*, 41 IBIA 1, 27-28 (2005), a group claimed that it should have been "combined with" the petitioner "as constituting the present-day continuation of" a single historical tribe, and that failure to do so undermined its own petition for acknowledgment. In another case, the Board accepted another petitioning group, the "Schaghticoke Indian Tribe" (SIT), as an interested party. SIT contended that a Schaghticoke tribe should be Federally recognized, but that SIT — not the Schaghticoke Tribal Nation (the subject of the final determination in that case) — was the true representative of the tribe. *See In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 IBIA 30, 38 (2005). In each of these cases, a conflict and potentially adverse effect on the party claiming interested-party status was clearly articulated or readily apparent from the claim asserted.

In contrast, in the present case we are left with a bare claim that common ancestral lineage of the Nation and Montauk, dating back to an individual living in the 17th century, must mean that the Nation "cannot independently be given Federal Acknowledgment." Montauk Opening Brief at (unnumbered) 4. And we are left to speculate how or why the Final Determination to grant acknowledgment to the Nation has adversely affected or might adversely affect any legal, factual, or property interest of Montauk. Montauk had the burden to establish that it is an "interested party," and we conclude that it has failed to do so here.

Conclusion

Neither the Coalition nor Montauk has demonstrated that it has standing to request reconsideration of the Final Determination because neither has shown that it has a stake in the outcome to acknowledge the Nation as a tribe.

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[19](...continued)
requester "might be affected" by a final determination, *see* 34 IBIA at 25-26, we decline to follow and extend that approach in this case. As noted earlier, a historical relationship may be sufficient for standing in the proceedings leading up to a final determination, but a historical relationship, without more, is not sufficient to demonstrate that the final determination itself adversely affects, or might adversely affect, the requester. Here, Montauk characterizes the historical relationship between itself and the Nation as separate tribes that were part of a confederacy, *see supra* at 128, 134-35, which is not a sufficient relationship, standing alone, to support standing to seek reconsideration from the Board of the Final Determination.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. § 83.11, the Board dismisses the requests for reconsideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge